

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/646,192

Applicant(s)

WATSON ET AL.

Examiner

SON P. HUYNH

Art Unit

2424

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 10 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 30-34.41 and 170-177.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Son P Huynh/
Primary Examiner, Art Unit 2424

Continuation of 3. NOTE: Amendments to the claims such as "using a hardware device" in claim 1 and/or "terrestrially" in claims 33, 172 would require further consideration and/or search.

Applicant argues in Ellis, the television equipment does not receive the movie data including a video file, a plurality of audio files each in a different language, and Ellis therefore, Ellis does not or cannot perform discarding one or more the plurality of audio files other than the desired one or more audio files since Ellis does not even receive a plurality of audio files each in a different language. In fact, Ellis teaches away from the invention since Ellis discloses the television distribution facility may response by providing the requested television program to the user's television equipment with only a single audio track containing audio in the selected language. Eliminating unnecessary audio tracks may lessen the bandwidth requirement for transmitting programming signal from the television distribution facility to a user's television equipment (pages 7-8). This argument is respectfully traversed.

It is noted that Ellis does not disclose the television distribution facility is not part of "hardware device" in the claim. In fact, Ellis discloses interactive program guide television 17 comprises television distribution facility and user television interface (see include, but not limited to, figures 2a-2b, col. 5, line 64-col. 6, line 40). Thus, the "hardware device" in the claim could be interpreted as interactive television program guide television 17. In this case, Ellis discloses the interactive program guide television 17 receives movie data including video file and a plurality audio files/tracks each in a different language (see for example, col. 3, lines 42-57 as pointed out by Applicant).

In case the "hardware device" in the claim is interpreted as the user television equipment only, Ellis' disclosure of user television equipment still reads on the claims.

Col. 3, lines 42-57 (pointed out by Applicant) is only one embodiment of the inventions. In fact, Ellis discloses user television equipment receives movie data/video program, the movie data/video program including video files and a plurality of audio files each in a different language. The language is filtered locally at the user television equipment using packet filter and/or digital component selector and/or audio component selector and/or program guide - see include, but not limited to, figures 3-4, 7a-7b, col. 4, lines 42-44, col. 9, lines -9-50, col. 12, lines 11-20, 36-62, col. 14, lines 21-34, col. 15, lines 10-36, 63-65, col. 18, line 20-col. 19, line 11, col. 19, line 63-col. 20, line 22).

For the reasons given above, rejections on the claims are sustained.

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